HON'BLE SRI JUSTICE B.PRAKASH RAO
&
HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO.2981 OF 1998

Dated 18-09-2006

Between:

1. S.Neelakanta Rao son of Lakshminarasimha Rao, aged 80 years, Occupation: Retired Principal, Government Junior College, Tangutur, Prakasam District, now resident at H.No.KJ-12, APSRTC Officers' Quarters, Kachiguda, Hyderabad.(died).

2. S.V.L.Narayana Rao, son of late Sri Neelakanta Rao, 57 years, resident of Q.No.K.J.12, R.T.C.Officers' quarters, Kachiguda, Hyderabad.

(Petitioner No.2 came on record as L.R. Of the deceased petitioner as per the court orders dated 1-11-2004 in WPMP.No.6051 of 2004.)

…Petitioners

And:

1. The Principal Secretary, Finance Department, Government of Andhra Pradesh, Secretariat Buildings, Hyderabad and others.

…Respondents

ORDER: (Per Honourable Sri Justice Ramesh Ranganathan)

Aggrieved by the order of the Tribunal, in O.A.No.4315 of 1995 dated 24.9.1997, the present writ petition is filed.

The Tribunal, by its order dated 24.09.1997, rejected the application in O.A.No.4315 of 1995 filed by the retired Government servant seeking sanction of family pension to his mentally retarded son and for extending the benefits under G.O.Ms.No.52, dated 20-2-1984.

The Tribunal dismissed the said O.A. holding that the applicant was still alive and was receiving his pension. The Tribunal held that, as long as he was alive, no direction could be given for payment of family pension. It further held that it was open to the applicant to approach the authorities for payment of family pension to his mentally retarded son by nominating his son under the rules, if he was so advised.

During the pendency of the writ petition, the petitioner died, and his eldest son, who is the guardian of the mentally retarded son, has come on record seeking a direction that the family pension of his deceased father may be given to his mentally retarded brother.

Heard Sri M.Ganga Rao, learned counsel for the petitioner, and the learned Government Pleader for Services-II, appearing on behalf of the respondents.

Sri M.Ganga Rao, learned Counsel for the petitioner, submits that, since the petitioner died, the mentally retarded son, being the nominee of his deceased father, was entitled for payment of family pension. Learned Government Pleader, appearing on behalf of the respondents, on the other hand, submits that since the petitioner had already retired from service as a Principal on 23.04.1974, he was not eligible for benefits of the family pension scheme and therefore, the question of extending family pension benefits to any of his sons, including the mentally retarded son, did not arise.

It is necessary to note that this question, now raised before us,

has not even been examined by the Tribunal. Since the Tribunal is a Court of first instance, as held by the Apex Court in L.CHANDRA KUMAR v UNION OF INDIA [1], it is appropriate that the Tribunal adjudicate this question after hearing both parties. The order of the Tribunal, in O.A.No.4315 of 1995 dated 24-9-97, is set aside and the O.A. is remanded to the Tribunal for its consideration afresh in accordance with law. Since the O.A. is of the year 1995, and the matter relates to payment of family pension, the Tribunal shall hear both the parties and dispose of the O.A., as early as possible, in any event not later than a period of two months from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. No order as to costs.

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B.PRAKASH RAO, J

Dated: 18-09-2006.

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RAMESH RANGANATHAN, J

Dvs

HON'BLE SRI JUSTICE B.PRAKASH RAO

&

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO.2981 OF 1998
(Judgment delivered by the Honourable
Sri Justice Ramesh Ranganathan)

Dated 18-9-2006

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[1] Air 1997 sc 1125